

National Labor Relations Board

§ 101.9

the Regional Director to take further action.

§ 101.7 Settlements.

Before any complaint is issued or other formal action taken, the Regional Director affords an opportunity to all parties for the submission and consideration of facts, argument, offers of settlement, or proposals of adjustment, except where time, the nature of the proceeding, and the public interest do not permit. Normally prehearing conferences are held, the principal purpose of which is to discuss and explore such submissions and proposals of adjustment. The Regional Office provides Board-prepared forms for such settlement agreements, as well as printed notices for posting by the respondent. These agreements, which are subject to the approval of the Regional Director, provide for an appeal to the General Counsel, as described in § 101.6, by a complainant who will not join in a settlement or adjustment deemed adequate by the Regional Director. Proof of compliance is obtained by the Regional Director before the case is closed. If the respondent fails to perform the obligations under the informal agreement, the Regional Director may determine to institute formal proceedings.

§ 101.8 Complaints.

If the charge appears to have merit and efforts to dispose of it by informal adjustment are unsuccessful, the Regional Director institutes formal action by issuance of a complaint and notice of hearing. In certain types of cases, involving novel and complex issues, the Regional Director, at the discretion of the General Counsel, must submit the case for advice from the General Counsel before issuing a complaint. The complaint, which is served on all parties, sets forth the facts upon which the Board bases its jurisdiction and the facts relating to the alleged violations of law by the respondent. The respondent must file an answer to the complaint within 14 days of its receipt, setting forth a statement of its defense.

§ 101.9 Settlement after issuance of complaint.

(a) Even though formal proceedings have begun, the parties again have full opportunity at every stage to dispose of the case by amicable adjustment and in compliance with the law. Thus, after the complaint has been issued and a hearing scheduled or commenced, the attorney in charge of the case and the Regional Director afford all parties every opportunity for the submission and consideration of facts, argument, offers of settlement, or proposals of adjustment, except where time, the nature of the proceeding, and the public interest do not permit.

(b)(1) After the issuance of a complaint, the Agency favors a formal settlement agreement, which is subject to the approval of the Board in Washington, DC. In such an agreement, the parties agree to waive their right to hearing and agree further that the Board may issue an order requiring the respondent to take action appropriate to the terms of the settlement. Ordinarily the formal settlement agreement also contains the respondent's consent to the Board's application for the entry of a judgment by the appropriate circuit court of appeals enforcing the Board's order.

(2) In some cases, however, the Regional Director, who has authority to withdraw the complaint before the hearing (§ 102.18), may conclude that an informal settlement agreement of the type described in § 101.7 is appropriate. Such agreement is not subject to approval by the Board and does not provide for a Board order. It provides for the withdrawal of the complaint.

(c)(1) If after issuance of a complaint but before opening of the hearing, the charging party will not join in a settlement tentatively agreed upon by the Regional Director, the respondent, and any other parties whose consent may be required, the Regional Director serves a copy of the proposed settlement agreement on the charging party with a brief written statement of the reasons for proposing its approval. Within 7 days after service of these documents, the charging party may file with the Regional Director a written statement of any objections to the proposed settlement. Such objections will

be considered by the Regional Director in determining whether to approve the proposed settlement. If the settlement is approved by the Regional Director notwithstanding the objections, the charging party is so informed and provided a brief written statement of the reasons for the approval.

(2) If the settlement agreement approved by the Regional Director is a formal one, providing for the entry of a Board order, the settlement agreement together with the charging party's objections and the Regional Director's written statements are submitted to Washington, DC, where they are reviewed by the General Counsel. If the General Counsel decides to approve the settlement agreement, the charging party is so informed and the agreement and accompanying documents are submitted to the Board, upon whose approval the settlement is contingent. Within 7 days after service of notice of submission of the settlement agreement to the Board, the charging party may file with the Board in Washington, DC, a further statement in support of objections to the settlement agreement.

(3) If the settlement agreement approved by the Regional Director is an informal one, providing for the withdrawal of the complaint, the charging party may appeal the Regional Director's action to the General Counsel, as provided in § 102.19 of the Board's Rules and Regulations.

(d)(1) If the settlement occurs after the opening of the hearing and before issuance of the administrative law judge's decision and there is an all-party informal settlement, the request for withdrawal of the complaint must be submitted to the administrative law judge for approval. If the all-party settlement is a formal one, final approval must come from the Board. If any party will not join in the settlement agreed to by the other parties, the administrative law judge will give such party an opportunity to state on the record or in writing its reasons for opposing the settlement.

(2) If the administrative law judge decides to accept or reject the proposed settlement, any party aggrieved by such ruling may ask for leave to appeal to the Board as provided in § 102.26.

(e)(1) In the event the respondent fails to comply with the terms of a settlement stipulation, upon which a Board order and court judgment are based, the Board may petition the court to adjudge the respondent in contempt. If the respondent refuses to comply with the terms of a settlement stipulation providing solely for the entry of a Board order, the Board may petition the court for enforcement of its order pursuant to section 10 of the National Labor Relations Act.

(2) In the event the respondent fails to comply with the terms of an informal settlement agreement, the Regional Director may set the agreement aside and institute further proceedings.

§ 101.10 Hearings.

(a) Except in extraordinary situations the hearing is open to the public and usually conducted in the Region where the charge originated. A duly designated administrative law judge presides over the hearing. The Government's case is conducted by an attorney attached to the Board's Regional Office, who has the responsibility of presenting the evidence in support of the complaint. The rules of evidence applicable in the district courts of the United States under the Rules of Civil Procedure adopted by the Supreme Court are, so far as practicable, controlling. Counsel for the General Counsel, all parties to the proceeding, and the administrative law judge have the power to call, examine, and cross-examine witnesses and to introduce evidence into the record. They may also submit briefs, engage in oral argument, and submit proposed findings and conclusions to the administrative law judge. The attendance and testimony of witnesses and the production of evidence material to any matter under investigation may be compelled by subpoena.

(b) The functions of all administrative law judges and other Board agents or employees participating in decisions in conformity with section 8 of the Administrative Procedure Act (5 U.S.C. 557) are conducted in an impartial manner and any such administrative law judge, agent, or employee may at any time withdraw if he or she deems himself or herself disqualified because of